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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,717	01/03/2002	Mark E. Sanders	1805-0001	2210

28078 7590 07/29/2003

MAGINOT, ADDISON & BOWMAN
111 MONUMENT CIRCLE
SUITE 3000
INDIANAPOLIS, IN 46204

EXAMINER

CHAPMAN, JEANETTE E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/039,717

Applicant(s)

SANDERS, MARK E.

Examiner

Chapman E Jeanette

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-14 is/are allowed.
- 6) ☐ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott. Scott discloses multi use concrete form liner with perforations and bends/fold 50/51/52; see figure 4. The device comprising a sheet having a primary portion 43/44 and an overhang portion 45-46 and a fold portion 51 connecting the primary portion to the overhang portion. The primary portion is capable of extending substantially along an entire width of a concrete slab and to cover a portion of the upper surface of the slab adjacent an exposed side of the slab. The overhang portion is suitably sized enabling it to cover a portion of the side of the slab. The fold portion enables the overhang portion to abut the side of the slab when the primary portion is resting on the surface of the slab. The sheet of Scott is capable of being used in another of many multiple uses; it can also be used for protecting a portion of a poured slab during activity at a site adjacent the poured slab.

The sheet is capable of being rolled. The fold portion/line 52 enables folding the sheet. Note: the claims are not method claims but article claims. The material is known to be substantially rigid. See column 4, lines 60-65. Rigid liner material is known in the art.

Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott in view of JP 71217.

Scott lacks a means for temporarily securing a portion of the sheet to the slab as taught by JP 71217. It would have been obvious to include the adhering means in order to prevent the liner from becoming disengaged while in use. JP teaches adhesive. There are various types of adhesives applied in various ways; One of ordinary skill in the art would have selected any one of those ways types capable of aiding in fulfilling the intended use of the device. Such limitations are within the scope of the invention.

Allowable Subject Matter

Claims 11-14 are allowable over the prior art of record.

Response to Arguments

Applicant's arguments filed 4/1/03 have been fully considered but they are not persuasive. Applicant argues use and purpose on page 2 second and third paragraphs; applicant argues the purpose and use of his liner verses those in the prior art. However, the structure is shown by the prior art of Scott and since the class of claims are not directed to a method of use but to an article, the liner; device of Scott may be stated as being capable of functioning as does the recited liner. All of the structural limitations that are recited are shown to exist in Scott's device. Scott clear shows bends (joint), folds (joint) and perforations; see columns 7 lines 25 –65.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 703-308-1310. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 703-308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 305-7687 for regular communications and 305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


Jeanette Chapman
Primary Examiner

jec
July 28, 2003